

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO No. 610 of 2003.

Judgement reserved on: 25.4.2007

Date of decision: 18.5.2007.

Leela Devi

..... Appellant.

Vs.

Jitender Singh

.... Respondent.

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?

For the Appellant : Mr. Virender Thakur, Advocate.

For the Respondents : None.

Kuldip Singh, Judge.

This appeal has been filed by petitioner claimant, mother of deceased Jaipal, against order dated 30.9.2003, passed by Commissioner Workmen Compensation, Rajgarh, District Sirmour, H.P. in case No. 4 of 2002, dismissing the petition under the Workmen's Compensation Act, 1923 (for short, the Act). The parties, herein are referred in the same manner, as in the impugned order.

2. The facts of the case are that petitioner filed petition before Commissioner under the Act, claiming Rs. 4,00,000/- compensation on account of death of Jaipal, her son. The further case is that on 27.4.2002, the deceased was driving Maruti car of respondent Jitender Singh and was going with some passengers from

Whether the reporters of the local papers may be allowed to see the Judgment?

...2...

Rajgarh to Churvadhar. On the way, he was murdered during the course of his employment as driver with respondent Jitender Singh by the passengers near village Thanoga, Tehsil Rajgarh. He was 19 years of age and his salary was Rs. 3,000/- per month. On these facts, the claim petition was filed.

3. The respondent Jitender Singh contested the petition by filing the reply and has taken several preliminary objections regarding maintainability of the petition, non-joinder and mis-joinder of necessary parties. On merits, he denied the case of the petitioner. He took the plea that deceased Jaipal was not employed by him as driver in his vehicle. Jaipal was murdered by some strangers. He has also submitted that deceased was not being paid anything by him.

4. The Commissioner framed seven issues. All the issues were decided in favour of the petitioner, but Commissioner dismissed the petition on 30.9.2003, on the ground that since deceased Jaipal was murdered, it is not a case of accident and therefore, petitioner is not entitled to any compensation. The Commissioner, however, while returning the finding on issue No.1, has held that deceased was employed as driver by Jitender Singh and while deciding issue No.2, it has been held that Jaipal died during the course of his employment with Jitender Singh.

5. I have heard the learned counsel for the appellant and have also gone through the record.

6. The appeal was admitted without reference to any specific substantial question of law, though alongwith the grounds of appeal substantial questions of law have been framed. On the basis

...3...

of the material on record, the petitioner has been heard on following substantial question of law:-

Whether Commissioner after deciding Issues No. 1 and 2, in favour of claimant has erred in rejecting the claim of the claimant on the ground that deceased was murdered, which is not an accident under the Act, and, therefore, the claimant is not entitled to any compensation?

7. Respondent Jitender Singh was served on 6.4.2002 in the appeal and appearance on his behalf was put up on 27.4.2004. An actual date notice was also given by the Registry to the respondent Jitender Singh, but none appeared on his behalf in the above appeal

8. The learned counsel for the petitioner –claimant has submitted that in view of findings returned by Commissioner on all issues and more particularly issues No. 1 and 2, the petitioner is entitled to compensation under the Act. He has submitted that murder of deceased Jaipal has taken place during the course of his employment with respondent Jitender Singh, therefore, such death is covered under the Act and respondent is liable to pay compensation to petitioner under the Act. According to the learned counsel, the findings returned by Commissioner on issues No. 1 and 2, have attained finality. The respondent has no escape but to pay compensation to the petitioner under the Act. The deceased was 19 years old at the time when he was murdered and his salary was Rs. 3,000/-, per month.

9. PW 1 Som Dutt, special attorney of petitioner has deposed that deceased Jaipal was his real brother and son of

...4...

petitioner Smt. Leela Devi. He was employed with respondent. On 27.4.2002, when Jaipal was going towards Churvadhar and driving the car then the car passengers murdered him. He was murdered during the course of his employment with respondent. He was 19 years old. He was having driving licence and his salary was Rs. 3,000/- per month. He has proved school leaving certificate Ex. P-2, post mortem report Ex. P-3 and FIR Ex. P-4. He has stated that respondent has paid nothing to petitioner. He was cross-examined at length, but nothing favourable to respondent was extracted in his cross-examination. PW 2 Lekh Ram has stated that he knew Jaipal. He was running a motor mechanic workshop at Rajgarh. Jaipal was working as driver with respondent. The respondent-owner of the car and deceased Jaipal used to visit him for repairing the car. PW 4 Ashok Kumar MHC has proved report No. 9 dated 3.5.2002 Ex.PY. PW 5 Dr. V.P.Singh has proved post mortem report Ex. PX. PW 3 Lachhman Dass, SHO, Police Station, Rajgarh has stated that case No. 36/2002 dated 4.5.2002 was got registered by Som Dutt. In that case, he suspected involvement of three passengers including one Mohan, who kidnapped Jaipal or killed him. Jitender a day earlier also reported that Jaipal was working with him as driver. In his investigation, it has come that Mohan Lal, Randhir Singh, Tara Dutt, Rajesh Kumar accused murdered Jaipal on 27.4.2002. In cross-examination, he has denied that Jitender Singh was not the owner of the car. He has further stated that he took in possession RC of the vehicle, which was produced by Jitender Singh. The respondent did not produce any evidence. On 8.9.2003, the respondent was

...5...

proceeded ex-parte and ultimately on 30.9.2003, the Commissioner announced the award.

10. The Commissioner has decided issues No. 1 and 2 in favour of the petitioner by holding that deceased was employed as driver by respondent Jitender and deceased died during the course of his employment under respondent Jitender Singh. This finding has attained finality inasmuch as respondent has not filed cross-objections in the appeal. Now the question is whether the respondent Jitender Singh is liable to pay compensation on account of murder of Jaipal during the course of employment of Jaipal with respondent Jitender Singh.

11. In **Madhya Pradesh State Road Transport Corporation and another vs. Basantibai and others** [1971 ACJ 328], it has been held in paras-9 and 10, as follows:-

“9. Now, coming to the point whether a duty-situation existed in the circumstances of the instant case, it cannot be denied that an employer owes a duty of care for the safety of his employees. The general scope of this duty has been stated as follows:-

The obligation is three fold- ‘the provision of a competent staff of men, adequate material and a proper system and effective supervision.’ To these should be added; a safe place of work.”

“10. From all these considerations, we are of opinion that in the facts and circumstances of this case, there existed a duty-situation and the management of the C.P.T.S. was liable in negligence in not taking adequate precautions for the safety of the deceased, either by making arrangement for his protection while he was on

...6...

his way to join his work, or by closing the business temporarily, if no such arrangement for the protection of the deceased was possible.”

12. In Dudhiben Dharamshi vs. New Jahangir Vakil Mills Ltd. [1976 ACJ 136], in para-2, it has been held as under:-

“The expression ‘arising out of employment’ is not confined to the mere nature of the employment. It applies to employment as such to its nature, its conditions, its obligations and its incidents. If by reason of any of those factors the workman is brought within the zone of special danger, the injury would be one arising ‘out of employment.....’”

13. In T.N.C.S. Corporation Ltd. vs. S.Poomalai [1996 ACJ 273], it has been held in para-6 of the judgement, as follows:-

“In this appeal, learned counsel for the appellant contended that the death had not taken place out of employment or in the course of employment of the deceased employee and so the respondent is not entitled to compensation. It is also pointed out by the appellant that there is no connection between the murder and the employment. In the judgement in the case of Bhacubai vs. Central Railway, (1994) 2 LLJ 403 (sic), a Division Bench of the Bombay High Court has held thus:-

It is clear that there must be a casual connection between the accident and the employment in order that it could be said that the accident arose out of the employment of the concerned workman and the cause contemplated is the proximate cause and not any remote cause.

...7...

If the employee in the course of his employment has to be in a particular place and by the reason of his being in that particular place he has to face a peril and the accident is caused by reason of that peril which he has to face then a casual connection is established between the accident and employment. The fact that the employee shares the peril with other members of the public is an irrelevant consideration. It is true that the peril which he faces must not be personal to him; the peril must be incidental to his employment and he must not by his own act add to the peril or extend the peril. But if the peril which he faces has nothing to do with his own action or his own conduct, but it is a peril which would have been faced by any other employee or any other member of the public, then if the accident arose out of such peril, a casual connection is established between the employment and accident. So, when a workman, was stabbed on his way to work and when there was no evidence to prove that there was any motive behind the murder, it was held that the accident must be held to be one arising out of the employment.

Once the applicant has established that the deceased was at a particular place and he was there because he had to be there by reason of his employment and the applicant further establishes that because the deceased was there he met with an accident, the applicant has discharged the burden which the law places upon him. The law does not place an additional burden upon the applicant to prove that the peril which the employee faced and the accident which arose due

...8...

to that peril was not personal to him but was shared by all the employees or the members of the public. Once the peril is established, it is for the employer then to establish that the peril was brought about by the employee himself, that he added or extended the peril or that the peril was not a general peril but a peril personal to the employee”.

14. In para-7, ultimately it has been held, as follows:-

After hearing both sides, I am of the opinion that the decision of the Division Bench of Bombay High Court reported in Bhacubai v. Central Railway, (1994) 2 LLJ 403 (sic), is applicable to the facts of the present case. Therefore, I hold that the deceased employee met with his death while he was going to his place of work and the death has arisen during the course of employment. Therefore, the appellant is entitled to compensation...”

15. It is common knowledge sometimes passengers in a taxi finding driver of the taxi all alone kill the driver for snatching the vehicle or for robbing the driver. So it cannot be said that there is no risk to the life of a driver while travelling in a car with passengers. The owner of the car knows this risk. It appears the car in question was being used by Jitender Singh respondent for carrying passengers and Jaipal used to drive that car. The killers of Jaipal killed him either for snatching the vehicle or for robbing him. It was the duty of respondent Jitender Singh to provide safe working place to the driver Jaipal and if workman is murdered while on duty the employer is liable. For the deceased and heirs of deceased such murder is an accident. The murder of Jaipal for purposes of the Act, is therefore,

an accident and employer is liable to pay compensation to his heirs under the Act.

16. As noticed above, the Commissioner has decided issues No. 1 and 2, in favour of the petitioner -claimant and that finding has attained finality. Therefore, in the facts and circumstances of the case, the respondent Jitender Singh is liable to pay compensation under the Act to the petitioner- claimant. The substantial question of law is decided in favour of the petitioner- claimant and against the respondent.

17. Now comes the question of compensation. PW 1 has stated that deceased Jaipal was being paid Rs. 3,000/- per month salary by Jintender Singh for driving the car. However, this has not been proved by corroborative evidence. In my opinion, in 2003 in a place like Rajgarh the private car drivers would not get Rs. 3,000/- per month salary. But keeping in view the nature of the employment of deceased Jaipal with respondent Jitender Singh, he must be getting Rs. 1500/- per month salary. Therefore, the salary of deceased Jaipal at the time of his murder is taken to be Rs. 1500/- per month. The deceased was 19 years old, therefore, factor of 225.22 will be applicable for assessing the compensation. Thus, the claimant is entitled to compensation, amounting to Rs. $225.22 \times 750 =$ Rs. 1,68,915/-.

18. The respondent has defaulted in paying the compensation to the claimant when it fell due. In ***National Insurance Co. Ltd. Versus Mubasir Ahmed and Another (2007) 2 SCC 349***, the Hon'ble Supreme Court has held:-

“9. Interest is payable under Section 4-A(3) if there is default in paying the compensation due under this Act within one month from the date it fell due. The question of liability under Section 4-A was dealt with by this Court in *Maghar Singh v. Jashwant Singh*. By amending Act 30 of 1995, Section 4-A of the Act was amended, inter alia, fixing the minimum rate of interest to be simple interest @ 12%. In the instant case, the accident took place after the amendment and, therefore, the rate of 12% as fixed by the High Court cannot be faulted. But the period as fixed by it is wrong. The starting point is on completion of one month from the date on which it fell due. Obviously it cannot be the date of accident. Since no indication is there as to when it becomes due, it has to be taken to be the date of adjudication of the claim. This appears to be so because Section 4-A (1) prescribes that compensation under Section 4 shall be paid as soon as it falls due. The compensation becomes due on the basis of adjudication of the claim made. The adjudication under Section 4 in some cases involves the assessment of loss of earning capacity by a qualified medical practitioner. Unless adjudication is done, question of compensation becoming due does not arise. The position becomes clearer on a reading of sub-section (2) of Section 4-A. It provides that provisional payment to the extent of admitted liability has to be made when employer does not accept the liability for compensation to the extent claimed. The crucial expression is “falls due”. Significantly, legislature has not used the expression “from the date of accident”. Unless there is an adjudication, the question of an amount falling due does not arise.”

19. Thus interest at the rate of 12% is payable from the date of adjudication of compensation. In the present case, the date of adjudication is the date of order dated 30.9.2003, of the Commissioner. Therefore, the petitioner- claimant is entitled to

...II...

interest at the rate of 12% per annum, on the compensation w.e.f. 30.9.2003 till payment.

20. The respondent has not paid any compensation to the petitioner- claimant nor any reason has been assigned for not paying compensation to the petitioner –claimant when it fell due. Therefore, in my opinion respondent Jitender Singh is liable to pay 25% of the compensation amount as penalty to petitioner- claimant which comes to Rs. 42,228/-.

21. Thus in all, respondent Jitender Singh is held liable to pay to the petitioner- claimant the following amount:-

(i)	Compensation amount	= Rs. 1,68,915/-
(ii)	Penalty, 25% of the compensation amount.	= Rs. 42,228/-

Total:	<u>= Rs. 2,11,143/-</u>
--------	-------------------------

The respondent shall further be liable to pay 12% interest on compensation amount Rs. 1,68,915/- w.e.f. 30.9.2003 to the petitioner- claimant till actual payment.

22. In view of above discussion, the appeal is accepted. The impugned order is set-aside and petitioner- claimant is held entitled to compensation amounting to Rs.1,68,915/-, penalty Rs. 42,228/-, interest at the rate of 12% per annum on compensation amount Rs. 1,68,915/- w.e.f. 30.9.2003 till payment, which is to be paid by respondent Jitender Singh.

23. No costs.

May 18, 2007.
(Hem)

(Kuldip Singh)
Judge.